

LAHORE LEADS UNIVERSITY

ASSIGNMENT

Guardianship Under Islamic Law and Its Functions to Care and Up-Bringing of a Child Personal Islamic Law-II

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Guardianship under Islamic Law and Its Functions for the Care and Upbringing of a Child

1. INTRODUCTION

Guardianship is an important concept in Islamic family law that ensures the protection, care, and proper upbringing of children who are unable to manage their own affairs. Islamic law strongly emphasizes the welfare, protection, and moral development of minors. Through guardianship, responsible persons are appointed to look after a child's personal and property matters. The main objective is to secure the best interests of the child and ensure proper upbringing in a safe, moral, and stable environment.

2. CONCEPT OF GUARDIANSHIP IN ISLAMIC LAW

Guardianship in Islamic law refers to the legal authority given to a person to care for the person, property, and welfare of a minor or an incapable individual. It is known as ***Wilayat***, meaning authority and protection.

The guardian is responsible for the child's care, education, moral training, and financial protection. Islamic law distinguishes guardianship from custody, as guardianship relates to legal responsibility while custody focuses on physical care.

3. Sources of Guardianship in Islamic Law

The concept of guardianship in Islamic law is derived from several sources.

1. The primary source is the **Qur'an**, which emphasizes the responsibility of guardians to protect and manage the property and welfare of minors.
2. The **Hadith (sayings of Prophet Muhammad)** also provide guidance regarding the protection and upbringing of children.
3. Another important source is **Ijma (consensus of scholars)**, through which Islamic jurists have developed detailed rules about guardianship.
4. **Qiyas (analogy)** is also used to interpret guardianship matters where direct guidance from primary sources is not available.

4. Types of Guardianship in Islamic Law

Islamic law recognizes different forms of guardianship depending on the nature of responsibility.

- **Guardian of the Person**

This guardian is responsible for the physical care, upbringing, education, and overall well-being of the child. The guardian ensures the child receives proper moral guidance and social development.

- **Guardian of Property**

A guardian of property manages and protects the minor's financial assets. The guardian must ensure that the property is preserved and used only for the benefit of the child.

- **Guardian for Marriage**

In Islamic law, the guardian may also have the authority to arrange or approve the marriage of a minor, especially in certain schools of Islamic jurisprudence.

5. WHO CAN BE A GUARDIAN

- **Father:**
  The father is the primary and natural guardian of the child under Islamic law.
- **Paternal Grandfather:**
  If the father is absent or deceased, guardianship is transferred to the paternal grandfather.
- **Other Male Relatives:**
  In some cases, guardianship may be given to close male relatives such as brothers or uncles if they are suitable.
- **Court-Appointed Guardian:**
  If no qualified family member is available, the court appoints a guardian to protect the welfare and interests of the minor.

6. FUNCTIONS OF GUARDIANSHIP FOR THE CARE AND UPBRINGING OF A CHILD

- **Education and Moral Guidance:**
  The guardian is responsible for providing proper education and moral training so that the child grows into a responsible and ethical member of society.

- **Physical Care and Protection:**
  The guardian ensures the child's basic needs such as food, shelter, healthcare, and overall safety and well-being.
- **Management of Property:**
  If the child owns property or inherits assets, the guardian must manage it honestly and in the best interest of the child.
- **Religious and Ethical Upbringing:**
  The guardian is responsible for the child's Islamic upbringing, including teaching Islamic values, discipline, and good conduct.

7. TERMINATION OF GUARDIANSHIP

- **Attaining Maturity:**
  Guardianship normally ends when the child reaches the age of majority or maturity and becomes capable of managing personal and financial affairs independently.
- **Court Decision:**
  Guardianship may also be terminated by the court if it is found that the guardian is unfit or not performing his duties properly.
- **Failure of Duties:**
  If the guardian misuses authority or fails to protect the child's welfare, the guardianship can be revoked.

8. Importance of Guardianship in Islamic Law

The concept of guardianship reflects the Islamic emphasis on social responsibility and protection of vulnerable members of society. It ensures that children receive proper care, guidance, and financial security during their formative years.

Guardianship also prevents exploitation or misuse of a minor's property and ensures that children grow up with proper moral and religious values.

9. CONCLUSION

Guardianship under Islamic law is an important system that protects the welfare and rights of minors. It ensures proper care, education, and management of a child's personal and financial matters. The main aim is to provide a safe and responsible environment for the upbringing of children until they reach maturity and can manage their own affairs.